

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 08 February 2006**

CASE NO.: 2005-LDA-12

OWCP NO.: 02-137068

IN THE MATTER OF

BIRGITT EYSSELINCK, INDIVIDUALLY AND ON BEHALF OF THYRA JESSICA  
EYSSELINCK AND NEAL U YS, MINOR CHILDREN OF DECEDENT, TIMOTHY  
A. EYSSELINCK,  
Claimant

v.

RONCO CONSULTING CORP.,  
Employer

and

FIDELITY & CASUALTY COMPANY OF NEW YORK.,  
Carrier

**APPEARANCES:**

Gary B. Pitts, Esq.  
On behalf of Claimants

Roger Levy, Esq.  
On behalf of Employer/Carrier

Before: Clement J. Kennington  
Administrative Law Judge

**DECISION AND ORDER DENYING BENEFITS**

This is a claim for benefits under the Longshore and Harbor Workers Compensation Act (the Act), 33 U.S.C. 901, et seq., and its extension, the Defense Base Act, 42 U.S.C. 1651 et seq. (DBA) brought by Claimant, Birgitt Eysselinck, (widow of decedent, Timothy A. Eysselinck)

individually and on behalf of Thyra Jessica Eysselinck and Neal Uys, minor children of decedent against Ronco Consulting Corp., (Employer) and Fidelity & Casualty Company of New York (Carrier). The issues raised by the parties could not be resolved administratively, and the matter was referred to the Office of Administrative Law Judges for a formal hearing. The hearing was held on May 10 and 11, 2005 in Houston, Texas.

At the hearing all parties were afforded the opportunity to adduce testimony, offer documentary evidence, and submit post-hearing briefs in support of their positions. Claimant and Janet Burroway (mother of decedent) testified live. In addition Claimant submitted depositions and statements from Martha Akwashika, Andries Brand, Larry Brophy, Barbara Brunotte, Deborah Burger, Jacques Celliers, Amon Lukas, Illin John Meyer, Ilka Niekerk, Gundula Perry, Harald Preschel, Rianne Selle, Pietere Barend Stofbergon and introduced 164 other exhibits which were admitted, including U. S. Army evaluations (CX-1 to 6); marriage and birth certificates (CX-7-10); Claimant's contract of employment with Employer for de-mining in Ethiopia (CX-12); memo and reports about minefield accidents in Ethiopia (CX-13,14); correspondence from and to decedent (CX-16 to 26; 30 to 58; 60, 61; 63, 64, 70, 71, 73-74, 76, 77, 80 to 89, 143, 154, 158) newspaper articles from Namibia (CX-90 to 96); military movies and posters (CX-97 to 100); photos of decedent (CX-102, 142, 149, 159, 163); last will and report of death of decedent (CX-104, 105); statements of Drs. H. De G. Laurie; R.G. Moisel, Reinhardt Sieberhagen (CX-109-111, 122-129, 145-147, 153); newspaper articles about decedent, combat in Iraq and Afghanistan; PTSD, (CX-130 to 134; 176); memos regarding decedent's team finding terrorist/insurgent improvised explosive devices in area where they were doing battle area clearance (CX-155, 156); mental health articles dealing with the effects of combat in Iraq and Afghanistan. (CX-132, 135).<sup>1</sup>

Employer/Carrier submitted 27 exhibits including depositions from Claimant, Janet Burroway, Drs. Reinhardt Sieberhagen and Carroll Brodsky (deposition and psychiatric evaluation); Will R. Haynes (statement and deposition); and Brandt Marshall (statement and deposition) and Mike Hartling (RX-6, 7, 20-27); various DOL documents (RX-1-5 ); e-mail correspondence from decedent and Claimant (RX-8, 10-17); statement of Jacques Celliers (RX-18); letter from Janet Burroway to Employer President, Stehen Edelmänn.(RX-19) and list of arms carried by employees in Iraq. (RX -9).

Post-hearing briefs were filed by the parties. Based upon the stipulations of the parties, the evidence introduced, my observation of the witness demeanor, and the arguments presented, I make the following Findings of Fact, Conclusions of Law, and Order.

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<sup>1</sup> When referring to the record the following abbreviations have been used: Claimant's exhibits- CX-\_\_\_\_; Employer's exhibits-RX-\_\_\_\_; transcript pages- Tr.\_\_\_\_.

## **I. STIPULATIONS**

At the commencement of the hearing the parties stipulated and I find:

1. Decedent was employed by Employer in Baghdad, Iraq from August 5, 2003 until February 21, 1004.
2. The claim is for compensation and death benefits under the Act.
3. Decedent committed suicide on April 23, 2004.
4. Claimant was the legitimate wife of decedent at the time of his death on April 23, 2004.
5. Thyra Jessica Eysselinck was the natural daughter of decedent and Claimant. She was born on January 9, 2001.
6. Neal Uys was the natural son of Claimant and the dependent stepson of decedent at the time of decedent's death. He was born on August 9, 1989.
7. Decedent would be entitled to the maximum average weekly wage of \$1,030.78 based upon his earnings.
8. Employer/ Carrier had timely notice of the injury.
9. Employer/Carrier has not provided compensation.

## **II. ISSUES**

The following unresolved issues were presented by the parties:

1. Whether Claimant suffered from a work related psychological or psychiatric impairment.
2. If so, whether Claimant's psychological or psychiatric impairment created or produced an irresistible impulse causing Claimant to commit suicide thereby overcoming or defeating the Act's prohibition against compensability for willful suicide.

### III. STATEMENT OF THE CASE

#### A. Chronology:

This case involves the tragic suicide of Timothy A. Eysselinck (decedent) .Although the record contains voluminous exhibits and testimony from over 16 witnesses, many of the facts concerning decedent are uncontested and reflect a person of high moral character much loved by family, friends, and co-workers. <sup>2</sup>

Decedent was born in Gant, Belgium and lived abroad until age 8 when he came to the United States where he was educated. Decedent was raised by his mother, an English professor who taught at the University of Illinois and Florida State University. Decedent graduated with a degree in history from the University of Florida. While at the University of Florida, Claimant took ROTC and upon graduation went into U.S Army on active duty serving 4 years at various stateside bases. Upon leaving the Army Claimant was employed by Wackenhut providing security services at the U. S. Embassy in Cameroon after which he joined the Army Reserves and was deployed to Stuttgart, Germany, Bosnia, Congo and then Namibia. (Tr. 176, 177; RX-20, pp. 11, 12, 14, 18, 22, 23).

Decedent had a life long fascination with guns and the military and was an avid gun collector and hunter. Despite years of military service he never saw combat. (Tr. 120-124; RX-20, pp. 40-42). He was patriotic, a perfectionist, polite and “fiercely honorable” about following rules especially those related to hunting and inter personal relationships. (Tr.50, 153, 178-180; RX-20 pp. 44-50). Decedent’s last tour of Army duty was at the U. S. Embassy in Windhoek, Namibia from March through September, 1998, where he served as a liaison officer coordinating services for a de-mining project funded by the U. S. wherein the Namibian Defense Force cleared mines from power pylons. During this tour in April, 1998, decedent met Claimant. They married on December 31, 1999. Decedent was a loyal and devoted husband and father drawing no distinction between his stepson. (Neal Uys) and natural daughter (Thyra Jessica). (Tr. 182, 187, 188, CX- 19, 23, 37 48, 63, 89, 105, 102, 159).

When married Decedent was working for Force 21, a company owned and operated by Will Haynes, and engaged in de-mining operations with Namibian Defense Forces in northern Namibia. Decedent was a duty task leader responsible for administration, finances, general project management and training. In February, 2001, Employer replaced Force 21 but retained Decedent to continue this work until March, 2001, when Employer reassigned him to Addis Ababa as Chief of Party responsible for overall administration of de-mining operations. Claimant remained in that position until July, 2003, when reassigned to Baghdad, Iraq. (Tr. 28-31; 34-36, 40, 48, 49; CX-11, 12, 137; RX-20, p. 46).

Decedent arrived in Baghdad in August, 2003, while Claimant and their children remained in Windhoek, Namibia. In Baghdad decedent worked and lived in a secure area known as the

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<sup>2</sup> The only witness to question decedent’s character was former supervisor, Will Haynes. Haynes gave conflicting testimony. His testimony was moreover refuted by a number of witnesses as detailed herein.

Green Zone. Decedent was designated task leader responsible for the overall administration and training of Iraqi personnel who performed the actual physical de-mining task which included battle field area clearance, (BAC) i.e., the defusing or rendering inoperable unexploded ordinance such as cluster bombs and IEDs (improvised explosive devices). Decedent did this work until shortly before Christmas when he took a two week leave to return to Windhoek and attend a company meeting in Florida. (RX-20, p. 32). Decedent returned to Baghdad in January, 2004, and remained there until February 21, 2004, when in agreement with Employer he took a 3 month leave of absence and returned to Windhoek where he lived until April 23, 2004, on which day he committed suicide. (RX-20, pp. 31, 51; CX-104, 108, 152). Decedent was respected by fellow workers and trainees. (CX-101, 106, 107, 149, 158). In turn he cared for, was concerned about and proud of those with whom he worked. (Tr. 53-55, 134, 191; CX-160).

## **B. Claimant's Exhibits**

In support of its position that Decedent suffered from work related, post traumatic stress disorder which produced an irresistible suicidal impulse, Claimant introduced multiple exhibits.<sup>3</sup> Exhibits CX-1-6, reflect top army evaluations from 1989 through 1998. Exhibits CX-7-10 show Claimant's marriage certificate, and birth certificates of daughter Thyra Jessica and decedent's step son, Neal Uys. Exhibits CX-11, 12 show Employer's worldwide de-mining operations and Decedent's contract of employment in Ethiopia with CX-13 and 14 indicating mine field accidents in February and May, 2003, in Ethiopia. However, Decedent admittedly had no direct involvement in Ethiopian de-mining operations. (Tr. 50, 127; RX-20, p. 27).

CX-15 through CX-23 show Decedent's transition from Ethiopian to Baghdad, close ties to Ethiopian staff, mechanical problems with Decedent's flight from Kuwait to Baghdad, and Decedent's affection for Claimant and family with Decedent scheduled to go home by mid December, 2003. CX-24 is a weekly company report for October 27, 2003 showing request for additional security measures for employee housing, training of Iraqi personnel as medics, dog handlers, de-miners and leaders with reference to attacks on civilian targets such as the Red Cross/Crescent, Al-Rashid and CPA Palace.

CX-25 is an e-mail from Decedent to his mother, Janet Burroway, indicating Decedent will leave Iraq if he feels unsafe. This is followed by another e-mail on the same day (October 28, 2003) from Decedent indicating that he hoped to get home for Christmas with conditions not nearly as bad as the news portrayed. (CX-26). CX-27, a monthly company report for November, 2003, shows completion of initial training with Employer hiring a local security and intelligence team to conduct security screens before site clearance commences with reference to shots being fired at international staff, death threats being received by Iraqi team and section leaders. CX-28, an e-mail of November 3, 2003, indicates an attack on civilians and soldiers

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<sup>3</sup> Many of these exhibits while providing more biographical data about decedent, military combat and post-traumatic stress had marginal importance in helping to resolve the main issues of this case.

near Fallujah. CX-29, a briefing note of November 3, 2003, shows completion of basic training for IMOC (Iraqi Mine Clearance Organization) and deployment. The first attack on civilians after Decedent arrived came on September 5, 2003 when a contractor was shot in the head. (CX-154).

CX-30, a November 10, 2003 memorandum from Decedent to the Iraqi National Mine Action Authority show 3 rounds of small arms fired at Employer's employees but no sustained injuries. CX-32, an e-mail from Decedent to Claimant indicates a mortar attack in the direction of the palace. CX-33, an e-mail from Decedent to his stepmother dated November 16 2003, shows Decedent promising to leave if his security is at risk because he wanted to be around to marry off his son and daughter.

Subsequent e mails and correspondence show a November 19, 2003 civilian convoy attack; shots fired on November 22, and December 4, 2003 at Employer's employees; a November 29, 2003 vehicle attack near Tikrit, a December 4, 2003 convoy attack in western Baghdad. (CX-35-45). On December 6, 2003, Decedent declared a security stand down limiting operations to the Green Zone. (CX-46-49). A December 13, 2003 e-mail shows Decedent on occasion carrying a MP-5 and rifle. (CX-50). Employees found IEDs (improvised explosive devices) on November 22, 2003. (CX-155, 156).

Decedent left Baghdad on December 15, 2003 and arrived in Namibia on December 17, 2003. Claimant then left for a company meeting in Tampa, Florida on January 3, 2004 and returned to Baghdad on January 7, 2004. As a result of the company meeting Employer adopted policies allowing its employees to carry arms, wear bullet proof vests while at the same time providing contract security. (CX-53-59, 75-77). Additional correspondence for January and February, 2004, show Decedent reprimanding the IMCO acting director for the unauthorized use of IMCO vehicles, the use of IEDs to attack private security convoys, a February 10, 2003 attack on Employer employees and various photos show cluster bombs, burnt out vehicles, Decedent in a tank, a clean up operation of a torpedo factory. (CX-60-70, 72).

Correspondence sent after Decedent arrived back in Namibia show him apparently making a good adjustment as of March 8, 2004, inviting his sister to visit on March 10, 2004, going on a hunt on March 29, 2004 with stepson and daughter with stepson showing little interest but being more upset with gun manufacturer failing to deliver a .416 Rigby, graciously turning down a job offer from Larry Brophy in Ethiopia on April 14, 2004, and mailing shirts to employees in Baghdad on April 20, 2004. (CX-80-88). Friends and family like other Namibians opposed the U. S. involvement in Iraq, but welcomed back Decedent treating him as a native. (CX-90-96). Military CDs viewed by Decedent prior to his death, a U.S. Army recruiting and black beret poster appear as CX-97-100.

### **C. Testimony of Claimant, Birgitt Eysselinck**

Claimant testified at length over a two day period about her relationship with Decedent, his work background and the circumstances surrounding his death. The details of Decedent's life and work history have already been set forth except for the events immediately preceding his

suicide and will not be repeated. It is obvious to the undersigned that Claimant was a devoted wife and mother. In addition she was an intelligent and honest witness, but was mistaken concerning the exact nature of Decedent's work which was essentially administrative and did not involve actual de-mining or defusing of weapons.

Claimant described her marriage as the perfect marriage with Decedent being a devoted father and husband, a caring, courteous, and non-aggressive person with whom she had no fights or quarrels. (Tr. 52). While Decedent was in Baghdad, Claimant had almost daily conversations with him which were interrupted on 3 to 4 occasions when mortars would land in the green zone. None of these mortars came near Decedent. (Tr. 56). Decedent had a good relationship with his daughter and stepson except for occasional disputes over discipline. (Tr. 79, 80).

After returning from Iraq Decedent had no readjustment problems until the last week of March, 2004, when he became irritable, could not sleep and complained of being depressed. Noise from small children and hair dryers became annoying. Decedent started to drive recklessly, complained about having to cook at night and about a very expensive road racing bicycle his wife had given him for his birthday. His eyes began to twitch, and he trembled when climbing a ladder. (Tr. 82-87).

On Friday, April 23, 2004, Decedent returned from a 3 day hunt and was visibly upset by wounding an oryx (antelope) and being unable to track him. Upon arriving home Claimant observed Decedent in an angry and aggressive state throwing an expensive pair of binocular against the kitchen table, complaining about the failure to receive a special order rifle and telling his wife he was concerned about employees in Iraq. (Tr. 99-105).

Decedent began to march about the house and sat down and watched cartoons with his daughter while Claimant and her son went to the gym. Later that day Decedent and Claimant had a disagreement about letting their son attend a German carnival because Decedent was concerned about his son's company. The disagreement was resolved with a lecture from Claimant about the dangers of drugs and aids after which Decedent drove his son to a friend's (Celliers) house so he could attend the carnival. (Tr. 106-110).

Decedent and Claimant had dinner after which Decedent put his daughter to bed. Then they began to play two handed bridge. Claimant noticed Decedent had a red and swollen neck, suggested they both go to bed but Claimant refused insisting that they play the cards that had been dealt. About 10 minutes later Decedent remarked he was tired of being the bad man. Claimant replied that he was not whereupon Decedent stated that he hated his stepson but immediately retracted the statement and told Claimant to get him professional help while jabbing his right finger towards Claimant. Claimant responded she was tired of cheering him up. Decedent then jumped up, left the room and returned saying "so you want to say you have been cheering me up for the past five years" whereupon he took out a pistol and shot himself in the head. (Tr. 111-114).

On cross Claimant admitted Decedent was an avid gun collector and hunter and returned from Iraq disillusioned about the war, Namibian reaction to it and the corruption of Halliburton and other contractors. Decedent was also upset about Employer's treatment of employees

(failing to pay between assignments), loss of a law suit involving sale of a vehicle and failure to receive a gun he had ordered several years previous. (Tr. 120-121, 125, 135, 139-147, 153-155). Claimant also admitted that Decedent over a two month period following his return from Iraq did a lot of socializing until two weeks before his death after which he stayed at the house except for a 3 day hunt. (Tr. 161-172). Claimant also asserted Decedent had been responsible for dismantling cluster bombs in Iraq without training and had engaged in de-mining operations in Namibia. (Tr. 127, 128, CX-142).

#### **D. Testimony of Claimant's Mother, Janet Burroway**

Ms Burroway testified about Decedent's upbringing, education, and military involvement describing her son as fiercely honorable and polite having a loving and playful relationship with Claimant. (Tr. 175-182). She described Decedent as having been a typical teenager who loved and was loved his parents. (Tr.187). Although her son was a conservative Republican, he came to hate the Bush Administration for what he viewed as lies, greed, corruption and incompetence. (Tr. 187).

Like Claimant Ms. Burroway assumed Decedent did actual de-mining work but admitted having no knowledge about Decedent being exposed to life threatening situations. (Tr. 199, 200). She admitted that Decedent had expressed suicide thoughts on two previous occasions once as a 10 year old and then later as an adult when working as a broker. (Tr. 210). She also admitted Decedent was frustrated with his stepson but regarded him as a typical teenager. (Tr. 212). Ms. Burroway was aware of Decedent's belief that (1) his life was in danger when he left Baghdad on February 21, 2004 and the plane he was in shot off protective flares; (2) contractors in Iraq were being killed ;(3) mortar attacks occurred in the Green Zone; and (4) shots were fired at her son's team. (Tr. 215-217, CX-130, 131).

#### **E. Testimony of Martha Akwashika**

Ms. Akwashika, who lives in Windhoek, Namibia, and has been Claimant's housekeeper since October, 2003, testified that on the morning of April 23, 2004 she saw a man (Pieter Stofberg) drop off Decedent at his home. Decedent had a swollen and red neck. Decedent told Claimant he did not sleep well the previous night and was angry about his hunting trip. Ms. Akwashika later heard Decedent tell his wife he was depressed, mentioned a rifle, and angrily threw binoculars on the counter saying they did not work and that he would return them.

Ms; Akwashika testified that on April 23, 2004, she saw Decedent march like a soldier through the house and then spent about 2 hours looking at cartoons with his daughter. She described Decedent as a good person who got along well with his son. (CX-124,164).



#### **F. Testimony of Andries Brand**

Mr. Brand, who lives in Oluno, Ondangwa, Namibia, and knew Decedent from 1999 to 2001 when Decedent worked for Will Haynes at Force 21, testified that Decedent got along well with the Namibia National Defense Force (NDF) and Haynes. Decedent was a likeable person who was more respected by the local people than Haynes. The locals looked up to Decedent and regarded him as an honest and good person. (CX- 146, 165).

#### **G. Testimony of Barbara Brunotte**

Ms. Brunotte, who lives in Windhoek and knew Decedent socially since May, 2002 testified she attended a dinner with the Eysselincks on April 9, 2004 during which Decedent told her his work in Iraq had been dangerous and required him to daily wear heavy military gear including a bullet proof vest, munitions belt and various guns including an automatic rifle. Decedent was disillusioned with the war, ashamed of being an American having seen a lot of unjustified killing. During his conversation with Ms. Brunotte which lasted about 25 to 30 minutes. Decedent appeared deeply troubled and depressed about his experience in Iraq occasionally drifting off and then refocusing.

Ms. Brunotte described Decedent's relationship with Claimant as friendly and caring. Decedent talked a lot with stepson listening with an open ear to his problems. (CX-127, 166).

#### **H. Testimony of Deborah Burger**

Ms. Burger, who lives in Kamanjab, Namibia and operates a guest house called the Oasis Garni, knew the Eysselincks socially from 1999 to 2001. She testified that Decedent was a friendly, courteous and respectful person towards her guest house staff and visitors. Will Haynes on the other hand patronized the local bar on weekdays and weekends, was frequently intoxicated, disrespectful and abusive toward female visitors grabbing and attempting to kiss them. (CX-140, 167),

#### **I. Testimony of Jacques Celliers**

Mr. Celliers, who lives in Windhoek, and was Decedent's brother-in-law, testified that on the evening of Decedent's return from Iraq in February, 2004, Decedent told him on the final takeoff from Iraq he heard explosions, thought his plane had been hit but it turned out to be defensive flares from the aircraft. Decedent's initial reaction was one of fear seeing his life flash before his eyes as the plane kept circling and the flares shot forth. Decedent felt helpless as he sat and watched the action.

Mr. Celliers testified that Decedent never mentioned the war again with most people in Namibia being opposed to it and America's involvement but supportive of Decedent's humanitarian efforts. Further this was the only occasion where Decedent felt his life was in

danger. After returning from Iraq, Decedent attended and participated in social events, talking about his work and the Iraqi workers in positive term and saying that conditions were not as dangerous as portrayed on TV. (CX-125, 168).

#### **J. Testimony of Amon Lukas**

Mr. Lukas, who lives in Windhoek and is Claimant's gardener, testified about an incident that happened on April 15, 2004 where Decedent was on a ladder outdoors. As he began to descend, Decedent started to shake so much that he had to jump off the ladder and in so doing, cut himself on razor wire attached to the top of the fence wall. Mr. Lukas was unable to explain the reason for Decedent's actions. (CX-169).

#### **K. Testimony of Illin Meyer**

Mr. Meyer who lives in Otjiwarongo, Namibia and works in northern Namibia, knew Decedent since 2000. Mr. Meyer did contract work for Employer and testified about an incident that happened on April 19, 2004 as he was helping Decedent rebuild a carport. On that afternoon, Mr. Meyer helped Decedent move a ladder so Decedent could climb onto his kitchen roof, a height of 2.5 meters. As Decedent went up the ladder he began shaking so much that Meyer asked him what the problem was. Decedent replied he did not like to climb. Later that day, Decedent talked about his dream of buying a game farm in Namibia and building a rifle assembly factory on the farm.

Mr. Meyer further testified that Will Haynes frequently praised Decedent regarding his neatness, effectiveness, and punctuality regarding Decedent as a perfectionist, always neat, polite and willing to listen to one's problems. (CX-145, 170).

#### **L. Testimony of Ilka Van Niekerk**

Ms Niekerk, who lives in Windhoek and is the sister-in-law of Decedent, testified about a conversation she had with Decedent on January 2, 2004, in which Decedent indicated he did not want to return to Iraq and was apprehensive about a company de-mining conference in Tampa, Florida. Later in March, 2004, she asked Decedent if he had seen a cartoon about Saddam with his mouth wide open and the question, "Where are those weapons of mass destruction?" (CX-126). Decedent became annoyed, said he didn't understand and walked away.

Ms. Niekerk described Claimant's marriage as strong with Decedent very fond of his wife, daughter and son. Decedent loved his children and had a good relationship with Neal despite minor conflicts. Decedent was helpful, loyal to fellow workers in Iraq and Ethiopia. Ms. Niekerk had no direct information about Decedent being exposed to life threatening situations other than what was portrayed in the news. Decedent worked 14 hours a day, 7 days per week with little time for sleep. Decedent was apparently concerned about returning to Iraq without

Employer allowing him to carry weapons. Ms Niekerk found Decedent to be easily irritated by children's noises after returning from Iraq, but nonetheless was socially outgoing. (CX-126).

#### **M. Testimony of Gundula Perry**

Ms. Perry who lives in Outjo, Namibia, and knew Decedent when he worked for Force 1 in 1999, testified that Decedent was consistently courteous, highly professional always striving for perfection. Will Haynes, praised him for his project management and computer skills. Decedent was exceedingly honest and loyal. Ms. Perry was upset with Haynes, whom she dated, for the negative comments he made about Decedent. (CX-139, 153, 172).

#### **N. Testimony of Harald Preschel**

Mr. Preschel, who lives in Windhoek and knew Decedent socially since 1999, testified he talked with Decedent for three hours on April 18, 2004 on Decedent's verandah, discussed a broad range of topic and detected no sign of anxiety or agitation. When questioned about Iraq, Decedent ignored the subject.

Mr. Preschel described Claimant's marriage as excellent with two people definitely in love. Decedent, according to Mr. Preschel, had a good relationship with his son. (CX-128, 173).

#### **O. Testimony of Rianne Selle**

Ms. Selle lives in Windhoek and is currently a civil servant working at Director Print Media and Regional Officer for the Namibian government. Ms. Selle works in Windhoek and oversees 10 regional offices. Ms. Selle knew Claimant when she worked for the Namibian government and then as information officers and officer in charge for the United Nations Information Center in Windhoek. Claimant met Decedent in Selle's house. Ms. Selle knew Decedent in her membership role on the Namibian De-Mining Liaison Committee and over the years developed a close relationship with the Eysselincks. Ms. Selle described Decedent as an extremely social person, fun loving, caring, a friend, fantastic father, and husband having a good relationship with his son.

Ms. Selle testified that on the day of Decedent's suicide, Decedent acted strange, questioning her ability to pick up Neal and her son after the carnival, and suggesting that Claimant make a dress out of a parachute. Following the suicide, Ms Selle had an emotional breakdown and sought psychiatric treatment from Dr. Sieberhagen. (CX-174).

#### **P. Testimony of Pieter Stofberg**

Mr. Stofberg, who knew decedent as a hunting guide and friend over a 5 year period, described Decedent as a dedicated hunter insistent on doing things the right way. On Decedent's

last hunt which was designed to cull or reduce excessive numbers, Decedent wounded an Oryx, and attempted to finish it off, but lost the trail. Decedent acted normally despite the inability to find the wounded animal. Stofberg drove Decedent home on the morning of April 23 and was shocked to later learn of the suicide.

Mr. Stofberg described Decedent as loyal to family and friends, a loving husband and disputed Haynes' assertion about Decedent being a racist. Stofberg testified that Decedent admitted having no combat experience and was a truthful and straightforward person. Decedent was concerned about his son's lack of discipline, loved him very much, and tried to provide what he thought Neal needed. Decedent downplayed the violence shown on TV in Baghdad saying the streets and markets were full. (CX-175).

**Q. Testimony of Employer Witnesses: Mike Hartling, Will Haynes, and Brent Marshall,**

Mr. Hartling has worked for Employer in Baghdad since October, 2003. Employer hired Mr. Hartling as a technical advisor to train Iraqi people to do mine clearance and UXO (unexploded ordinance) (RX-27, p. 10). The training program involved various phases in accord with international standards starting with basic de-mining and proceeding to DOD Level II and III, and leadership training. (RX-27; pp. 11, 12). Once trained Mr. Hartling accompanied the trainees into the field, whereupon battle area clearance commences involving area identification, ordinance marking, and destruction. (RX-27, p. 15). The first team to go into the field was in December, 2003. Fields were located in and out of the Green Zone.

Mr. Hartling testified that Decedent was a task leader or head administrator/logistics controller responsible for setting up operations, ensuring smooth running, and filing timely reports. Decedent worked mostly out of a training center located in the Green Zone in Baghdad. On rare occasions (once per site) Decedent would go to Employer's 4 task sites. (RX-27, p. 18). Once at the site Decedent would be briefed by a technical advisor and then guided around the site by the advisor. Decedent never touched live ordinance. All ordinance he touched was either defused or rendered non-functional. (RX-27, pp. 18, 19). Decedent stayed at the site for 3 to 6 hours. No accidents occurred while he was at the site.

Mr. Hartling identified photos labeled CX-62, 66, 67, and 142 as his photos. They show Decedent handling a bomblet from a CS-250 Iraqi cluster bomb. This was a harmless training bomblet. Other bombs appearing in the picture were defused and not a threat to Decedent and constituted a stock pile at Taji West. (RX-27, pp 24-26). Decedent did not participate in any bomb disposal. (RX-27, p. 27). Employer did not commence mine clearing operations until March, 2004. CX-67 is a photo showing Decedent posing in a tank located in a secure area. Another photo shows Decedent standing inside a destroyed French artillery piece. CX-142 shows various pictures of training ordinances, non fuse rockets, and bomblets, and fuses. Decedent was not qualified and did not handle live munitions.

Mr. Hartling lived with Decedent in a house in the Green Zone. It was an old villas and had 10 bedrooms, 4 bathrooms, a kitchen, dining and living room. They ate supper and watched movies together, and on occasion talked about hunting trips. (RX-27, p. 45). Although

Decedent carried a 9mm pistol, security was not a threat. Decedent got along well with the Iraqi teams. (RX-27, p.47). Decedent was upset about a court case involving a vehicle that he had lost because the person who sold it to him did not own it.

There was no security around the living quarters and compound because there had been no attacks with the nearest mortar attacks 10 kilometers away. (RX-27, p. 50). Decedent and staff moved freely in and out of the Green Zone. Decedent was never involved in any life threatening situations. (RX-27, p. 52).

Mr. Haynes described his relationship with Decedent who provided administrative support services for Force 21 and Employer de-mining operations. According to Haynes, Decedent knew nothing about actual de-mining and performed purely administrative functions such as writing reports and procuring supplies and on occasion relieving him in the field. Contrary to many other witnesses Haynes testified that Decedent was not good with people, was rude, uncaring, a military ranger “wantabee” and a person who felt no love for his parents. He was also a person who did not get along well with Claimant and her son, Neal, who lacked proper discipline. (RX-22, pp. 23-26, 53, 54,,70,93, 114).

Mr. Marshall, who has worked for Employer in Iraq from August 4, 2003 through April 2, 2004, as a logistics assistant, and then from April 4, 2005 to present as a task leader, described his work area in an office of the Coalition Provisional Authority inside a secure area known as the Green Zone. Mr. Marshall worked with Decedent who was the designated task leader responsible for overall operations including payroll, construction, recruitment, and training. (RX-26, p. 12). The actual training and de-mining was done by technical advisors hired by Employer. (RX-26; p.15). On occasion, Decedent visited the work sites to see how things were running. Decedent was not exposed to dangerous situations while in Iraq. (RX-26, p.16, 17). Decedent was friendly and was concerned about a vehicle he had purchased from a person who was not the true owner.

## **R. Testimony of Drs. Reinhardt Sieberhagen and Carroll M. Brodsky**

Both physicians appear to be well qualified board certified psychiatrist. Dr. Sieberhagen has practiced general psychiatry since 1998, receiving his initial medical degree in 1983 followed by a general practice until 1992 after which he returned to medical school completing a 4 year speciality course in psychiatry. (RX-21, pp.1-12). Dr. Sieberhagen has treated many persons with post-traumatic stress disorder caused by the war between Namibia and southern Angola. (Id. at 28).

Dr. Brodsky received his initial medical license in 1957 after graduating from the University of California San Francisco, became board certified in psychiatry in 1964, and professor of psychiatry at the University of California maintaining a clinical practice in psychiatry treating or examining hundreds of persons suffering with post-traumatic stress disorder as well as other psychiatric conditions. (RX-24, pp. 1-13).

Dr Sieberhagen treated Claimant and Ms. Selle helping both ladies deal with Decedent's suicide. Dr. Sieberhagen did not have the opportunity to see Decedent but based upon his interviews and review of materials provided by Claimant was able to conclude that Decedent was a happy man up to the time he took his life. (Id. at 19, 20). Dr. Sieberhagen testified that Decedent was a sociable and well liked person. He was very happy with marriage to Claimant and their daughter. Decedent was supportive and assertive toward his stepson developing a trusting relationship with him. (Id. at 22). Before rendering a psychiatric opinion about Decedent's mental problems, Dr. Sieberhagen stated that the mainstay of a diagnosis of post-traumatic stress disorder (PTSD) is an examination of the patient which he was not able to do. However, from information supplied post-mortem and looking for an explanation for the suicide, the only possible explanation he could come up with was PTSD. (Id. at 23, 24).

Regarding his diagnosis of PTSD, Dr. Sieberhagen testified as follows:

Post-trauma stress disorder as a clinical entity has been well described, and its association with the circumstances under which Mr. Eysselinck worked over the past years has been well documented. And my argument would be that given the circumstances under which he worked and in the sequelae of events after him coming back from the war zone which ended in a suicide is so typical of what is described in many, many different journals that one cannot ignore this as a real possibility that this person suffered from post-traumatic stress disorder or some similar impairment. (Id. at 26, ll. 4-16).

Dr. Sieberhagen stated that he could not come up with a better explanation why Decedent committed suicide, and thus, concluded that PTSD must have been the cause by a process of elimination of other possibilities. (Id. at 84). Dr. Sieberhagen testified that PTSD symptoms include flashbacks (reliving experiences such as intrusive thoughts, nightmares, or hallucinations or illusionary visions), avoidance of situations related to the trauma; hyper-arousal or hyper-vigilance. (Id. at 29, 30). Dr. Sieberhagen assumed Decedent regarded his situation in Iraq as dangerous because of correspondence from Pete Owen to Decedent dated October 17, 2003 referring to an alleged constant threat of attack and a message from Mike Hartling about employees carrying weapons and a letter from Decedent on May 19, 2003, describing an incident in Ethiopia where a person was injured stepping on a mine. (Id. at 34). Dr. Sieberhagen then referred to other documents, wherein Decedent referred to one of his men being injured by a mine in Ethiopia, increased attacks on contractors in Iraq, threats received by trainees, shots fired at staff, fights between staff and Iraqis, security being a concern as security manager for Employer arrived. In all, Dr. Sieberhagen referred to 17 documents in show support for criterion A, PTSD, Section 309.81 of the DSM-IV. (Id. at 47, 48).

Dr. Sieberhagen found Decedent to be easily aroused and anxious receiving little support for the U. S. war effort in Iraq, and a perfectionist, all of which impact on the development of PTSD as found in *The Comprehensive Textbook for Psychiatry* by Kaplan & Sadock, 6<sup>th</sup> Edition. (Id. at 54). Decedent was very sensitive to noise a characteristic of PTSD as was his sense of learned helplessness as witnessed when leaving Iraq and the plane he was in shot off flares. (Id.

at. 60). Dr. Sieberhagen admitted there was no evidence of intense fear, helplessness or horror or evidence of reliving experiences or flashbacks as required by Section A-2 and B for PTSD in the DSM-IV. (Id. at 61-63). Dr. Sieberhagen opined that during Decedent's last minutes he was unable to govern his own faculties and acted on an irresistible impulse. (Id. at 106).

Dr. Sieberhagen further testified that he thought Decedent suffered from a number of low impact stressors and the airplane incident which resulted in intense fear to meet the Section A criterion with avoidance of Iraq meeting the C criterion, with repeated symptoms of increased arousal meeting the D criterion, with symptoms lasting more than a month and causing significant distress in social setting (conduct toward wife and children, throwing binoculars and driving recklessly meeting the E and F criterion for PTSD. (Id. at. 111-117).<sup>4</sup>

In contrast to Dr. Sieberhagen, Dr. Brodsky testified that in diagnosing PTSD, he utilized the specific criteria established in the DSM-IV. Additionally he reviewed extensive material including Dr. Sieberhagen's deposition and medical report of June 16, 2004, hearing testimony, and post-hearing depositions. The criterion include a highly traumatic event in which one's life is threatened or one sees someone else's life being threatened resulting in: (1) an immediate, (2) intrusive, (3) heightened awareness, vigilance, alertness in re-experiencing the event in question with, and (4) attempts at avoidance of said event. (RX-24, pp.20, 21). Dr. Brodsky found no discussion by Dr. Sieberhagen of an immediate impact or any explanation for why Decedent took his life except to say that Dr. Sieberhagen reasoned backward concluding that it must have been the airplane event and the dangers he had experienced over years because he could find no other explanation. (Id. at 27, 28). Further, there was no evidence of avoidance and nothing different about Decedent's life until shortly before his suicide. (Id. at 29).

Dr. Brodsky testified that suicide is a risk of depression and not PTSD with tables showing only a small percentage of suicides resulting from acute stress disorders as opposed to depression. Further, there was no nexus between the airplane incident and the suicide. (Id. at 39). Based upon the following facts, Dr. Brodsky formulated a differential diagnosis of a frustrated individual who after consuming several glasses of wine shot himself due to a combination of factors: (1) a lawsuit which at that point in time he had lost, (2) no job offer, (3) some problems with his stepson, (4) non-receipt of gun, (5) more drinking than normal, (6) failure to properly shoot and kill an animal, (7) disagreement with wife over discipline of stepson and (8) being a perfectionist. (Id. at 42-45). Dr. Brodsky found no evidence of any irresistible impulse due to any mental disorder and no connection between the suicide and his work. (Id. at 46-49). On cross, Dr. Brodsky testified that Decedent's suicide was not incongruent with his personality (a man who collected guns) and had it not been for the stressors of the day, a loss of inhibition due to alcohol, Decedent probably would not have committed suicide. (Id. at 67).

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<sup>4</sup> There was no persistent avoidance of stimuli as required by Criterion C because it was Claimant who frequently and voluntarily brought up the airplane incident. In like manner, there were no persistent symptoms of increased arousal until shortly before the suicide. Thus, the requirements of Criterion D and E were not met. Moreover, there was no significant distress in social functioning until the act of suicide. Hence Criterion F was not met.

## IV. DISCUSSION

### A. Contention of the Parties

In its brief encompassing 147 pages Claimant argued that: (1) Decedent was a loyal, professional, well-liked person, and a perfectionist, (2) Decedent experienced a very stressful work environment in Ethiopia and Iraq, underwent a perceived near-death experience leaving Baghdad, and continued experiencing work-related stress after arriving back home, (3) Decedent as part of the American war effort trained and supervised Iraqis in the clearance of unexploded ordinance, which was not appreciated in Namibia and exacerbated Decedent's post-Iraq work related stress and PTSD, (4) Decedent was torn between conflicting loyalties between his work in Iraq and his promise to Claimant to leave Iraq if it got "too dangerous." and, (5) post-Iraq work-related stress, and PTSD symptoms formed an irresistible impulse leading or contributing to Decedent's suicide.

Employer contends that: (1) Section 903 (C) expressly bars compensation for Claimant because of Decedent's willful and intentional suicide, (2) there is insufficient evidence to establish any industrial injury including any work related PTSD as established by Dr. Bodsky's medical testimony which show Decedent not experiencing any symptoms related to the only possible traumatic stressor experienced by Decedent, an airplane incident of February 21, 2004, wherein the plane carrying Decedent sent out protective flares on its departure from Baghdad airport, (3) there is no evidence as required by PTSD Criterion B of DSM-IV that Decedent persistently re-experienced the traumatic event in the form of dreams or flashbacks, or experienced intense psychological distress or reaction to cues symbolizing or resembling an aspect of the plane event, (4) there is no evidence that Decedent satisfied PTSD Criterion C of DSM-IV by persistently avoiding stimuli associated with the trauma, (5) further there is no evidence of Decedent demonstrating persistent symptoms of increased arousal over any period of time as required by Criterion D and E nor is there is any evidence of significant distress in social functioning except for the final act of suicide, (6) Claimant has not proven that Decedent suffered from an irresistible impulse related to his employment so as to render eligible for compensation and thus not responsible for his suicide, (7) decedent's suicide was likely the result of non-industrially stressors, (8) Dr. Sieberhagen's opinions are based upon surmise and conjecture and are unsupported by relevant facts, and (9) much of Claimant's evidence is irrelevant based on false suppositions or circumstances unrelated to Claimant's employment.

### B. Credibility

It is well-settled that in arriving at a decision in this matter the finder of fact is entitled to determine the credibility of the witnesses, to weigh the evidence and draw his own inferences from it, and is not bound to accept the opinion or theory of any particular medical examiner. *Banks v. Chicago Grain Trimmers Association, Inc.*, 390 U.S. 459, 467 (1968); *Louisiana Insurance Guaranty Ass'n v. Bunol*, 211 F.3d 294, 297 (5<sup>th</sup> Cir. 2000); *Hall v. Consolidated Employment Systems, Inc.*, 139 F.3d 1025, 1032 (5<sup>th</sup> Cir. 1998); *Atlantic Marine, Inc. v. Bruce*,



551 F.2d 898, 900 (5<sup>th</sup> Cir. 1981); **Arnold v. Nabors Offshore Drilling, Inc.**, 35 BRBS 9, 14 (2001). Any credibility determination must be rational, in accordance with the law and supported by substantial evidence based on the record as a whole. **Banks**, 390 U.S. at 467; **Mijangos v. Avondale Shipyards, Inc.**, 948 F.2d 941, 945 (5<sup>th</sup> Cir. 1991); **Huff v. Mike Fink Restaurant, Benson's Inc.**, 33 BRBS 179, 183 (1999).

As mentioned previously, I was impressed by the sincerity and honesty of Claimant and Decedent's mother, Janet Burroway, but found they were mistaken regard Decedent's work which did not involve actual de-mining or destruction of ordinance. Rather Decedent basically had a desk job and only went into the field on 4 occasions during which he was not exposed to live ordinance. Although Claimant introduced many exhibits wherein employees were occasionally shot at or threatened and contractors attacked, Decedent was not exposed to life threatening or perceived life threatening incidents except arguably for Decedent's departure flight when the plane shot off protective flares. This was supported by credible testimony from Mr. Hartling, and Marshall and to a lesser extent Decedent who admitted the news exaggerated safety threats and true to his promise to Claimant left Baghdad before security deteriorated. There was moreover no evidence to suggest that Claimant was exposed to life threatening situations in either Ethiopia or Namibia, where Decedent had essentially an office or desk job.

Regarding expert witnesses Drs. Sieberhagen and Brodsky, I find as Dr. Brodsky noted, that Dr. Sieberhagen had no explanation for why Decedent committed suicide other than to engage in backward reasoning stating that it must be PTSD or some related disease because he could find no other cause. Dr. Brodsky relied upon the DSM-IV and testified how the evidence failed to meet the DSM-IV criteria for PTSD as opposed to Dr. Sieberhagen who hinted at, but never, identified or explained how symptoms related to or demonstrated PTSD much less created an irresistible impulse to commit suicide.

### C. Coverage

Section 903 ©) of the Act provides that "No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another." Suicide bars recovery unless the employee's death does not stem from a willful act but rather is caused by an irresistible impulse resulting from an employment related condition. **Konno v. Young Brothers, Ltd.** 28 BRBS 57 (1994). Whereas in the present case, Decedent admittedly committed suicide the Section 920(d) applies but is rebutted Id. at 64. Claimant bears the burden of showing that the suicide was the result of an irresistible impulse to kill oneself. **Cooper v. Cooper Assocs.** 7 BRBS 853 (1978).

In order to show irresistible impulse Claimant must produce expert opinion that Decedent suffered from a mental disease or impairment which created the impulse leading to suicide. **Voris v. Texas Employers Ins., Assoc.**, 190 F.2d 923, 931 (5<sup>th</sup> Cir. 1951).

The DSM-IV lists PTSD at Section 309.81 and describes the diagnostic features as follows:

The essential feature of Posttraumatic Stress Disorder is the development of characteristic symptoms following exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury, or other treat to one's physical integrity; or witnessing an event that involves death, injury or a threat to the physical integrity of another person; or learning about unexpected or violent death, serious harm or threat of death or injury experienced by a family member or close associate (Criterion A 1). The person's response to the event must involve intense fear, helplessness, or horror...(Criterion A 2). The characteristic symptoms resulting from the exposure to the extreme trauma include persistent re-experiencing of the traumatic event (Criterion B); persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (Criterion C) and persistent symptoms of increased arousal (Criterion D). The full symptom picture must be present for more than 1 month (Criterion E) and the disturbance must cause clinically significant distress or impairment in social, occupational, or other important areas of functioning (Criterion F).

(Id. at 424).

Claimant relies upon Dr. Sieberhagen for the diagnosis of PTSD, yet his testimony shows only at best the presence of Criterion A. There is moreover no reliable evidence to show an irresistible impulse let alone one connected to either a mental impairment or decedent's work. That does not mean there was not some degree of danger with just being in Iraq. However, general work stressors are not sufficient to cause PTSD let alone deprive Decedent of free will when he killed himself.

In the present case, I am confronted with two different expert opinions in explaining the suicide. Dr. Sieberhagen would have me believe Decedent committed suicide because of PTSD related to working conditions while speculating that there must have been an irresistible impulse because of Decedent's irrational action. On the other hand, Dr. Brodsky opines Claimant committed suicide because of a combination of non-work related stressors including extra alcohol consumption. Of these two opinions, I find Dr. Brodsky's opinion to be more logical and persuasive. That is not to say Decedent had a bad marriage or unusual problems dealing with his stepson. Decedent was confronted with a combination of non-work related stressors and before waiting to have Claimant provide him professional help made an irrational decision to end his life. However, unfortunate and tragic Decedent's actions were, Employer is not responsible for such conduct.

Accordingly, I find Decedent willfully committed suicide, and thus, Claimant is barred from compensation pursuant to Section 903 © of the Act.

## **V. ORDER**

Based upon the record evidence as detailed above, I find no merit to the instant claim. Accordingly it is hereby dismissed.

**A**

CLEMENT J. KENNINGTON  
ADMINISTRATIVE LAW JUDGE